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<b>J.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0286</b>
	)	<b>Issued: June 15, 2022</b>
<b>DEPARTMENT OF AGRICULTURE, FOOD</b>	)	
<b>SAFETY &amp; INSPECTION SERVICE,</b>	)	
<b>Minneapolis, MN, Employer</b>	)	
	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On December 15, 2021 appellant filed a timely appeal from an October 12, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

<sup>2</sup> The Board notes that, following the October 12, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on May 27, 2021, as alleged.

## **FACTUAL HISTORY**

On June 10, 2021 appellant, then a 48-year-old consumer safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on May 27, 2021 she sustained right elbow and wrist pain when she slipped on a wet floor causing her to fall on her right elbow and back while in the performance of duty. On the reverse side of the form the employing establishment acknowledged that she was injured in the performance of duty. Appellant did not stop work.

In an attending physician's report, Part B of an authorization of examination and/or treatment (Form CA-16) dated June 10, 2021, Audrey Hubler, a nurse practitioner, related that she fell at work after slipping on a wet floor and noted that x-rays revealed tenderness of the sacroiliac joint and a decreased range of motion of the shoulder.

A June 10, 2021 return-to-work note from Dr. Robert Hill, a Board-certified family medicine specialist, indicated that appellant could return to work on June 27, 2021. Subsequently, on June 27, 2021 he held appellant off work through July 2, 2021. In a return-to-work note dated July 2, 2021, Dr. Hill indicated that appellant was unable to return to work until cleared by a physical therapist.

In notes dated August 9 through 23, 2021, Toni Santos, a physical therapist, related that appellant injured herself on May 27, 2021 after slipping on a floor and landing on her right hip.

In a September 8, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

OWCP received progress notes dated June 10, 25, and July 2, 2021 from Ms. Hubler, who related the May 27, 2021 workplace incident. Ms. Hubler examined appellant for a lumbar back and shoulder strain and administered a steroid injection.

By decision dated October 12, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that a traumatic injury occurred in the performance of duty on May 27, 2021, as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time

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<sup>3</sup> *Supra* note 1.

limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on the employee's statements in determining whether a *prima facie* case has been established.<sup>8</sup> An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden to establish a traumatic injury in the performance of duty on May 27, 2021, as alleged.

Appellant has not established the factual component of her claim as she has insufficiently explained how and where the claimed injury occurred.<sup>10</sup> In her June 10, 2021 Form CA-1, she indicated that on May 27, 2021 she sustained right elbow and back pain when she slipped and fell on a wet floor. Appellant, however, did not submit a detailed account of the alleged injury or any

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<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>10</sup> *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

additional corroborating factual evidence describing how and where she sustained an injury on May 27, 2021. The Board has held that such a vague recitation of facts does not support a claimant's allegation that a specific event occurred to cause a work-related injury.<sup>11</sup>

OWCP, in its September 8, 2021 development letter, informed appellant of the type of factual and medical evidence needed to establish her traumatic injury claim. It requested that she complete an attached questionnaire and provide a detailed factual description of the alleged employment incident. Appellant, however, did not respond.<sup>12</sup>

Appellant has not provided a sufficient description of the alleged employment incident and the mechanism by which she sustained an injury. The Board, therefore, finds that she has not met her burden of proof.<sup>13</sup> As appellant has not met her burden of proof to establish that an incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.<sup>14</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on May 27, 2021, as alleged.<sup>15</sup>

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<sup>11</sup> *M.C.*, *supra* note 9; *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

<sup>12</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

<sup>13</sup> *H.D.*, Docket No. 15-1698 (issued May 4, 2016).

<sup>14</sup> *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>15</sup> The Board notes that the employing establishment issued a Form CA-16, dated June 10, 2021. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

A handwritten signature in cursive script, appearing to read "J. D. McGinley".

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board